

No. 21,981

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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BENJAMIN F. MARLOWE,

APPELLANT.

v.

J. FRANK COAKLEY, et al.,

APPELLEES.

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PETITION FOR NEW HEARING

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BENJAMIN F. MARLOWE  
Attorney for Appellant  
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Oakland, California 94612  
836-1860

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FILED



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5 UNITED STATES COURT OF APPEALS  
6 FOR THE NINTH DISTRICT  
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9 BENJAMIN F. MARLOWE,

Appellant,

vs.

2 J. FRANK COAKLEY, et al.,

Appellees.

NO. 21,981

5  
6 PETITION FOR A REHEARING

7 TO THE HONORABLE UNITED STATES COURT OF APPEALS FOR  
8 THE NINTH CIRCUIT:

9 Appellant respectfully petitions for a rehearing in  
0 the above entitled case on the following grounds:

1 I. The Court's decision completely avoided the  
2 constitutional issues raised by Appellant.

3 II. The Court, by its decision, placed its stamp of  
4 approval that any District Attorney can use perjury knowingly  
5 solely for the purpose of obtaining an indictment.

6 III. The Court's decision did not consider the function



of the District Attorney before a grand jury as set forth in Appellant's Brief, to wit: that the function of the District Attorney before a grand jury is investigatory, and not even remotely quasi-judicial in nature.

#### ARGUMENT

The Appellant refers to and by such reference incorporates herein Appellant's Brief originally submitted to the above Court. If this Court can, after reading the authorities cited in said Brief and the arguments made before this Court by the Appellant take the position that a district attorney can with immunity knowingly present perjurious evidence to a grand jury solely for the purpose of obtaining an indictment or information, this Court in effect puts its stamp of approval on such conduct. No law, California or otherwise, authorizes a district attorney to present perjured information to the grand jury knowing said evidence is perjurious. Appellant specifically stated in his complaint that the said district attorney knowingly presented false information to the grand jury and that said information was given under oath, making the same perjury. In the State of California the use of perjury in such a fashion is a felony. It would appear that the irreparable damage caused to any professional person under such circumstances need not require argument.

It is the contention of the Appellant that if an individual citizens, professional or otherwise, can be abused by such acts on the part of a district attorney, then the



1 Constitution and more particularly the Bill of Rights is re-  
2 duced to a meaningless document and no citizen is safe from  
3 abuse of process as set forth by the Appellant in his complaint.  
4 To permit such conduct on the part of any law enforcement  
5 officer, district attorney or otherwise, is to encourage such  
6 conduct on the part of unscrupulous district attorneys.  
7 Appellant can prove without any shadow of a doubt that the said  
8 District Attorney J. Frank Coakley is unscrupulous in the full  
9 sense of the term and will not hesitate to avenge himself  
0 against an individual, professional or otherwise, by abusing  
1 the judicial processes to destroy said individual and his  
2 family.

3 To permit the conduct complained of by Appellant  
4 in his complaint is to spawn the seeds of anarchism and  
5 dictatorship. The very purpose of the Constitution and Bill of  
6 Rights predicated upon the background of abuses which motivated  
7 the writing of said Constitution and Bill of Rights was and  
8 is to protect citizens from the very conduct complained of by  
9 the Appellant.

0 In the early days of our history, men of honor chose  
1 the field of honor to settle much less serious complaints. No  
2 man has the moral or legal right to resort to such methods.  
3 We have Courts of Law. The very least any citizen can expect  
4 is protection from unscrupulous district attorneys or any  
5 other unscrupulous individual who has the power to destroy an  
6 individual and his family under the guise of carrying out his





duties. This protection is afforded by the Constitution. The only question that remains is -- will the Courts, under the authority of the United States Constitution and the Bill of Rights, protect an individual from said conduct?

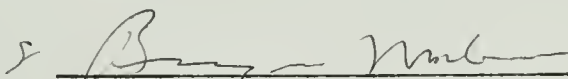
The Court cited California Penal Code Sec. 925 (West 1956); California Government Code Sec. 26501 (West 1955) as support for its position that a California district attorney's presentation of evidence to a grand jury is clearly within the scope of his duty to advise and present information to the grand jury as authorized by California law. The Appellant at no time questioned the right of a district attorney to present evidence to a grand jury under the said cited authorities. Appellant specifically made it clear and unequivocal that no district attorney is authorized by any California law to knowingly present perjured testimony solely for the purpose of obtaining an indictment as alleged in the complaint.

*See Chapter 4, § 1, Justice Black's opinion on Bill of Rights*

The Appellant respectfully requests this Court to reconsider its decision rendered in the above matter, as well as a reconsideration of the consequences of giving a district attorney unbridled powers which, in effect, flaunts the Bill of Rights of the United States Constitution.

Respectfully submitted,

Dated: December 2, 1968.

  
BENJAMIN F. MARLOWE  
Appellant

